DIVERSIFIED GROUP BROKERAGE
CORPORATION

TESTIMONY BEFORE
INSURANCE AND REAL ESTATE COMMITTEE
TUESDAY, FEBRUARY 22, 2011

LEGISLATIVE OFFICE BUILDING, ROOM 2D
1:00 p.m.

Senator Crisco, Representative Megna and Members of the Insurance and Real Estate Committee, thank you for the opportunity to submit testimony today. My name is Brooks Goodison and I am the President of Diversified Group Brokerage Corporation doing business as Diversified Administration Corporation (DGB/DAC), located at 369 North Main Street Marlborough, CT 06447. We have provided professional, third-party health plan administrative services for single employer groups, such as claims processing, enrollment, eligibility, consolidated billing, customer service, as well as comprehensive wellness and disease management services, to self funded employers in the state of Connecticut for the last 44 years.

We are a Connecticut company, with 100% of our business services located in Connecticut. Our staff are dedicated and highly experienced in administering health plans as evidenced by their average tenure of 18 years in this profession with our organization. Our company provides employment for 65 full time employees in Connecticut as well several part time positions, which serve approximately 200 employer groups in our State. In fact we have membership in many states but our primary operating zone is in Connecticut, New York, Massachusetts, Rhode Island, Maine, and Vermont.

We are submitting testimony on ***Raised Bill No. 6307 An Act Regulating Third-Party Administrators.*** In theory, we understand and would like to be able to support the State's efforts in regulating certain aspects of Third-Party Administration. However, we do have significant concerns regarding the current version of this Raised Bill. It is important to note that we found about this bill in last year's session (HB 5090) only after it came out of committee and cleared the House of Representatives un-opposed. We worked hard to work in some last minute changes at that time and we were disappointed that this bill came back this session with broader and more onerous language than last year and without the suggested changes we had amended last session.

Based on discussions with the Insurance Department last year on this issue, we are under the impression that they struggle with their ability to intervene and help residents of the

state resolve complaints regarding certain Third-Party Administrators (TPAs). We agree that there should be some type of registration process for TPAs operating in the state so they can provide an efficient way to reach out to TPAs and help residents of the state resolve their problems promptly and effectively. However, we feel that this proposal's attempt to provide assistance to the citizens of our State that the Insurance Department may be casting too large a net.

We feel that some of the requirements of this proposed bill would likely cause us to change how we provide billing services for group life, disability and possibly stop-loss coverage for the employer groups we provide TPA services for. This change will be a burden to us since we would have to completely shift the way we receive our fees and our cash flow to accommodate this requirement. This change would also burden our employer groups who have hired DGB/DAC to provide these services because they would then need to receive multiple bills for our services (as a result of this Raised Bill) when they now operate with one common remitter.

It is important to note that the New England States mentioned above, where we do most of our business, either have no licensing or registration requirements or they have requirements that are much more reasonable and acceptable for a small business such as ours. In addition to our other concerns, we would like to make sure that the proposed Connecticut language does not put TPAs in Connecticut at a competitive disadvantage to those operating in other states. For your convenience and example, we have attached the links to both the Maine and the Rhode Island TPA laws, which are much less onerous than this proposal before us:

Maine:
http://www.mainelegislature.org/legis/statutes/24-A/title24-Ach18sec0.html

Rhode Island:
http://www.lawserver.com/law/state/rhode-island/ri-laws/rhode_island_general_laws_chapter_27-207

We are hopeful that we can work with all parties involved so that we are better able to understand the specific concerns the Insurance Departments sees with certain TPAs. We would also like to be careful that non-offending TPAs are clearly identified and excluded from this legislation and they do not get unduly caught up in the Insurance Department's net as this Raised Bill has the potential for a strong negative impact, not only on our business, but which would ultimately result in a negative effect for many single small employers in this state as well as their employees and the employees of our company.

Below we offer additional concerns with this proposed bill:

1. We feel the Raised Bill has conflicting language that leaves us unclear whether the licensing statute is intended to include TPAs that primarily process claims on behalf of single employer, self-funded ERISA plans seeing that the Raised Bill states that this bill would not "authorize the commissioner to regulate a self-insured health plan subject to the Employee Retirement Income Security Act of 1974" (ERISA).

By way of distinction, DGB/DAC is a TPA that functions as a subcontractor to single employer group health plans. Employers that wish to self insure their group health plans but do not want to do the plan administration themselves, hire a TPA like DGB/DAC to process and manage their health plan according to the individual group's specific plan

document that they dictate, which outlines the rules and process by which that particular group's benefits, coverage and eligibility are determined. DGB/DAC does not underwrite or assume the associated risk of underwriting on behalf of any employer's group health plan. We do not retain any premium (other than for simple bill collection) or make any final determinations on claim payments on any group health Plan we administer with the one exception of the group health plan we administer for our own employees

We do not see a clear public value to regulate a contract administrator who operates under the direction of the self-insured health plan. TPAs that process claims for self-funded ERISA plans are not Plan fiduciaries and therefore do not have discretionary control of Plan assets, Plan Design or final authority as to whether a claim is paid or denied. The discretionary control is with the Plan Sponsor which in most cases is the employer. ERISA, the Federal law that governs such plans, already regulates claim procedures, appeals and legal remedies for individuals should they disagree with the payment of a claim.

There are TPAs that may underwrite risk and retain the premium they collect but this is not the business model of a TPA like DGB/DAC. If the State is looking to regulate TPAs there will be a need to have different classifications of TPAs to separate DGB/DAC from the group of TPAs that do process and adjudicate claims, underwrite, accept premium and the risk associated with that premium acceptance.

2. Under several key sections, the proposed bill refers to insurers and "other persons" utilizing the services of a TPA. It is not clear to us if the term "other persons" includes single employer, self-insured health plans governed by ERISA. The definition of "Person" under Section 38a-1 of the CT General Statutes defines a "Person" as an "individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a business trust, an unincorporated organization or other legal entity". We recognize that this is the statutory language used to describe corporations, and while it is acceptable in some parts of the statute, the use of "person" is, on other parts of this proposal, casting a very broad net and appears to overlap the self- funded employers ERISA preemptions. We give an example of this in Number 3 below.

We have observed that many states with TPA licensing requirements only require licensure if a TPA performs services for an insurer and the regulations pertain only to services provided for or on behalf of an insurer. We are opposed to the broad use of the term "person" because it is unclear whether the term applies to self-funded plans governed by ERISA, since the legal entity behind the Plans (Single Employers operating as Plan Sponsors and Plan Administrator) seems to be included in the definition of "Person". **Other states, both with and with out the NAIC model language, make this distinction. Idaho, for example, is one such state.**

We therefore would recommend that the term "person" removed from all parts of the bill where it does not specifically relate to providing services to insurers.

3. We are opposed to Section 8 of the Bill because it would hinder our ability to provide essential cost containment services to our clients who are struggling to keep their health care costs under control. To be clear, the better job we do as a TPA to keep costs reasonable to our customer's health plans, the more coverage they are able to provide

their employees at affordable prices. TPAs work very hard to keep plan claim costs reasonable, appropriate and affordable utilizing results based performance provisions in our agreements with the employers Plan. It is important to note that these savings are not achieved to the detriment of Plan Members.

By limiting our efforts in this section, we will be less able to help employers intervene and manage unfair (sometimes grossly and egregiously unfair) billing practices seen with increasing frequency by medical providers such as certain hospitals, physicians as well as other ancillary providers like imaging facilities and laboratory providers.

We are able understand, in some circumstances, the need to restrict these types of compensation arrangements with insurers who may profit from unreasonable cost control measures, especially when these are achieved at the Plan Member's expense or detriment. But such restrictions applied to contract arrangements with ERISA plans would be harmful to small Employers who self-fund their health plans and utilize the services of a TPA. In addition, the limitation on performance based contracts would have a significant negative impact to our company's revenue which would ultimately result in increased costs to group health Plans as well.

Many other states that have adopted the NAIC Third Party Administrator licensing statute on this subject only limit licensure to TPAs providing services on behalf insurers and governmental plans, not self-insured ERISA Plans.

Thus we would like to see the "term" person removed from this Section. We offer the following suggestion of acceptable language, similar to the state of Idaho's TPA statute below:

Idaho General Statute 41-908 (Note: Idaho utilizes the NAIC TPA licensing model): "COMPENSATION TO THE ADMINISTRATOR. (1) An administrator shall not enter into an agreement or understanding with an insurer in which the effect is to make the amount of the administrator's commissions, fees or charges contingent upon savings effected by the adjustment, settlement and payment of losses covered by the insurer's obligations. This provision shall not prohibit an administrator from receiving performance-based compensation for providing hospital or other auditing services."

By way of further illustration, below is the section from Raised Bill 6307. Words marked in red are from the Connecticut Bill, but not in the Idaho statute which is highlighted in blue.

SECTION 8 CT RAISED BILL 6307. (1) A third party administrator shall not enter into any (an) written or oral agreement or understanding with an insurer or other person utilizing the services of the third party administrator that makes or has the effect of making the amount of the (in which the effect is to make the amount of the) third party administrator's commissions, fees or charges contingent upon savings effected by the adjustment, settlement and or payment of losses covered by the insurer's or other person's obligations. This provision shall not prohibit an administrator from receiving performance-based compensation for providing hospital or other auditing services.

If we could have the Bill utilize the same wording as Idaho's, we probably would not have a problem with this section.

4. We are strongly opposed to the licensing requirement to provide 2 years of audited financial reports initially and annually thereafter. The cost to a small TPA to have audited financial reports could be as high as $70,000 per year which would be a major additional financial burden to our business. We feel it is critical that the State understands that we do not pay any of our customer's health plan's claims with our company's funds. It is with this understanding we respectfully question the state's request for audited financial statements for TPAs such as DGB/DAC. To reiterate, we pay health plan claims with funds from our single employer clients. **We do not rely on our own operating income to pay claims. Requiring TPAs to submit audited financial statements is a significant financial burden that will not result in assuring a health plan's claims are paid.**

As an alternate suggestion to the requirement of audited financial statements, we find other states either do not require audited financial statements or the states will accept self certified financial reports for TPAs operating in the same capacity as DGB/DAC.

If this provision were left unchanged it would put an undue financial burden on our company with no positive result for residents of our State. In order to pay for the additional cost of audited financial reports, it may be necessary to layoff employees since it would difficult to offset a new expense of this size in these trying economic times of shrinking Connecticut companies with smaller and smaller enrollments. Laying off staff, while a last resort, is undesirable, destructive to individuals and families and would also negatively affect the level of service we provide our customers.

5. In general, we believe the annual reporting requirements and other regulations for licensure will make it difficult for our Company to continue to operate successfully in Connecticut. Many states allow TPAs who provide services to employers who self-fund their employee health plans to simply register with the state rather than the extensive and complicated procedures required for state licensure. We would prefer a simple registration process rather than full licensure.

6. We also would like the Committee to consider another significant difference from the TPA statute from other states adopting the NAIC model language like Idaho that we have found involves the CT statute that will require licensing for TPAs that provide claims adjudication services on behalf of self-funded Church Plans (even if the Plan is outside the State of Connecticut). Although Church Plans are not ERISA Plans, this provision could be harmful to small TPAs in the State and we would like it removed from this Raised Bill.

In closing, we thank you again for the opportunity to provide testimony on this proposed bill. We are thankful that we were able to be a part of this process this year at a more practical and appropriate time than last year's session. We are hopeful that with more time and a cooperative approach we can come up with an acceptable way for us all to move forward. We request, as a TPA & Connecticut employer, to remain involved in the process of Raised Bill 6307. I can be reached at the address on this letterhead or at 860-295-0238 ext. 432.